

1 5

2 Diane C. Stanfield (State Bar No. 106366)
3 Leib M. Lerner (State Bar No. 227323)
4 **ALSTON & BIRD LLP**
5 333 South Hope Street, Sixteenth Floor
6 Los Angeles, CA 90071
7 Telephone: (213) 576-1000
8 Facsimile: (213) 576-1100
9 diane.stanfield@alston.com
10 leib.lerner@alston.com

11 Attorneys for Creditor and Moving Party
12 Navigant Cymetrix Corporation

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

In re
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
TULARE LOCAL HEALTHCARE DISTRICT,
Debtor.

Case No.: 17-13797

DC No.: AB-1

Chapter 9

Date: November 1, 2017
Time: 9:30 a.m.
Place: 2500 Tulare Street
Fresno, CA 93721
Courtroom 13
Judge: Honorable René Lastreto II

ORDER APPROVING STIPULATION RE: MOTION OF NAVIGANT CYMETRIX
CORPORATION FOR RELIEF FROM THE AUTOMATIC STAY OR, ALTERNATIVELY,
REQUIRING DEBTOR TO ASSUME OR REJECT EXECUTORY CONTRACT; REQUEST
FOR ADEQUATE PROTECTION PAYMENTS AND PAYMENT OF ADMINISTRATIVE
CLAIM

Having read and considered the Stipulation Re: Motion of Navigant Cymetrix Corporation for
Relief from the Automatic Stay Or, Alternatively, Requiring Debtor to Assume or Reject Executory
Contract; Request for Adequate Protection Payments and Payment of Administrative Claim (DN 159),

1 a copy of which is attached, by and between Navigant Cymetrix Corporation (“Cymetrix”) and Debtor
2 Tulare Local Healthcare District (“Tulare”), and good cause appearing therefor,

3 **IT IS HEREBY ORDERED:**

4 (1) The automatic stay shall be lifted as to Cymetrix, effective retroactively, as of the
5 petition date of September 30, 2017.

6 (2) The Master Services Agreement by and between Cymetrix and Tulare dated
7 November 26, 2014 along with the applicable Statement of Work #1, as amended from time to time,
8 and as further described in the Motion (collectively, the “Agreement”), shall be deemed to have been
9 terminated effective October 5, 2017.

10 (3) The 14-day stay under Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure
11 shall be and is hereby waived.

12 (4) Cymetrix shall be entitled to an administrative claim for the reasonable value of its
13 post-petition services to the estate.

14 (5) Nothing herein shall be deemed to be a waiver of Cymetrix’ pre-petition claims based
15 on or arising from Agreement.

16
17 Submitted by:

18
19 /s/ Diane C. Stanfield

20 Diane C. Stanfield, Attorneys for
Creditor Navigant Cymetrix Corporation

21
22 /s/ Riley C. Walter

23 Riley C. Walter, Attorneys for Debtor
Tulare Local Healthcare District

24
25 **Dated:** Nov 01, 2017

By the Court

26
27 
28 **René Lastreto II, Judge**
United States Bankruptcy Court

1 3

2 Diane C. Stanfield (State Bar No. 106366)
3 Leib M. Lerner (State Bar No. 227323)
4 **ALSTON & BIRD LLP**
5 333 South Hope Street, Sixteenth Floor
6 Los Angeles, CA 90071
7 Telephone: (213) 576-1000
8 Facsimile: (213) 576-1100
9 diane.stanfield@alston.com
10 leib.lerner@alston.com

11 Attorneys for Creditor and Moving Party
12 Navigant Cymetrix Corporation

13 **UNITED STATES BANKRUPTCY COURT**

14 **EASTERN DISTRICT OF CALIFORNIA**

15 **FRESNO DIVISION**

16 In re

17 **TULARE LOCAL HEALTHCARE DISTRICT,**
18 **Debtor.**

19 **Case No.: 17-13797**

20 **DC No.: AB-1**

21 **Chapter 9**

22 Date: November 1, 2017
23 Time: 9:30 a.m.
24 Place: 2500 Tulare Street
25 Fresno, CA 93721
Courtroom 13
Judge: Honorable René Lastreto II

26 **STIPULATION RE:**

27 **MOTION OF NAVIGANT CYMETRIX CORPORATION FOR RELIEF FROM THE**
AUTOMATIC STAY OR, ALTERNATIVELY, REQUIRING DEBTOR TO ASSUME OR
REJECT EXECUTORY CONTRACT; REQUEST FOR ADEQUATE PROTECTION
PAYMENTS AND PAYMENT OF ADMINISTRATIVE CLAIM

28 This Stipulation is made by and among Creditor and Moving Party Navigant Cymetrix Corporation ("Cymetrix") and Debtor Tulare Local Healthcare District ("Tulare"), by and through their respective counsel of record, with respect to the Motion of Navigant Cymetrix Corporation for

1 Relief from the Automatic Stay Or, Alternatively, Requiring Debtor to Assume or Reject Executory
2 Contract; Request for Adequate Protection Payments and Payment of Administrative Claim
3 ("Motion") and is made with reference to the following facts:

4

5 1. WHEREAS Cymetrix and Tulare are parties to that certain Master Services
6 Agreement dated November 26, 2014 along with the applicable Statement of Work #1, as amended
7 from time to time, and as further described in the Motion (collectively, the "Agreement"), pursuant
8 to which Cymetrix has provided Tulare with a variety of services as described in the Agreement (the
9 "Services");

10 2. WHEREAS, Cymetrix employs more than fifty full-time equivalent employees to
11 perform the Services;

12 3. WHEREAS by letter dated August 7, 2017 (the "Default Letter") (sent by electronic
13 mail on August 21, 2017), Cymetrix gave notice of the Hospital's default under the Agreement
14 based on its failure to pay invoices as detailed in the Default Letter totaling \$1,738,537.35 as of that
15 time (the "Default");

16 4. WHEREAS the Default Letter provided Tulare with the contractual 45 days to cure
17 the Default, which notice period expired on October 5, 2017;

18 5. WHEREAS the Default was not cured on or before October 5, 2017, or at all;

19 6. WHEREAS Cymetrix continued to perform the Services both pre-petition and post-
20 petition for which it has received no compensation;

21 7. WHEREAS Tulare is unable to make any form of adequate protection payments at
22 this time;

23 8. WHEREAS Tulare has submitted a filing for a request for voluntary suspension of its
24 license with the California Department of Public Health, has suspended admission of new patients
25 and is in the process of transferring existing patients to other facilities pending reinstatement of its
26 license;

27 9. WHEREAS, Tulare wishes to minimize the administrative expense claim for Services
28 being performed by Cymetrix;

10. WHEREAS, Cymetrix and Tulare have worked cooperatively with respect to the above, and wish to resolve the Motion consensually:

IT IS HEREBY STIPULATED by and between the Parties, through their respective counsel, subject to the Court's approval, as follows:

(1) The automatic stay shall be lifted as to Cymetrix, effective retroactively, as of the petition date of September 30, 2017.

(2) The Agreement, including Statement of Work #1 as amended, shall be deemed to have been terminated effective October 5, 2017.

(3) The 14-day stay under Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure is waived.

(4) Cymetrix shall be entitled to an administrative claim for the reasonable value of its post-petition Services.

(5) Nothing herein shall be deemed to be a waiver of Cymetrix' claims based on pre-petition Services and/or the Default.

IT IS SO STIPULATED

Respectfully submitted

DATED: 10-30-17

DIANE C. STANFIELD
LEIB M. LERNER
ALSTON & BIRD LLP

/s/ Diane C. Stanfield

Diane C. Stanfield

Attorneys for Creditor Navigant Cymetrix Corporation

DATED: 10/25/17

RILEY C. WALTER
MATTHEW P. BUNTING
DANIELLE J. BETHEL
WALTER WILHELM LAW GROUP

Riley C. Walker

Riley C. Walter

Attorneys for Debtor Tulare Local Healthcare District